

UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO  
THE HONORABLE DAVID M. EBEL  
Byron White United States Courthouse  
1823 Stout Street, Room 109L  
Denver, Colorado  
(303) 844-3800

District Court Courtroom:  
Byron Rogers Federal Building  
1961 Stout Street, Room C201

This is a summary of the procedures that I use in the trials of civil and criminal cases. Please familiarize yourself with these matters, and follow the attached check-list. These procedures supplement the Federal Rules of Criminal and Civil Procedures and Local Rules of the District.

When addressing the Court for any reason, parties should always stand at the lectern and speak into the microphone.

The Court is punctual. Counsel and parties should arrive 10-15 minutes before scheduled hearing times. Turn off all cell phones and pagers before entering the courtroom.

#### Pre-Trial and General Procedures

Generally, the magistrate judge assigned to the case will conduct the Rule 16 scheduling conference and set status, settlement and pre-trial conference dates. Upon completion of the final pre-trial conference, counsel should come to my Chambers to obtain final trial preparation conference and trial dates. Scheduling should be planned with the assumption that all cases will go to trial within one year of filing, absent extraordinary circumstances. Counsel should expect to be given a firm trial date within 60 to 120 days from the final pre-trial conference.

Briefs in support and in opposition to Motions to Dismiss and Motions for Summary Judgment may not exceed twenty pages in length unless the Court has granted a page extension prior to five days before the brief is due. Reply briefs shall not exceed five pages in length. Trial briefs shall not exceed ten pages unless the Court has granted an extension.

When requesting a change in hearing dates, parties should endeavor to file unopposed, stipulated or joint motions. Please include **proposed** dates that have been cleared on all counsel's calendars for the Court to consider. There

is no guarantee that the Court will use these proposed dates. All motions should be accompanied by a proposed Order sent to my Chambers e-mail ([Ebel\\_Chambers@ca10.uscourts.gov](mailto:Ebel_Chambers@ca10.uscourts.gov)) and filed in Word Perfect (.wpd) or in a format in accordance with the District of Colorado ECF Procedures V.L (instructions on submission of a proposed order). Do not hesitate to contact the ECF Help Desk at 303-335-2050 with any questions.

Any motion or brief which a party wishes the Court to consider is to be filed at least 72 hours in advance of a hearing.

#### Trial / Hearing Procedures

There is one lectern in the courtroom from which attorneys will address the Court, witnesses and the jury. Counsel tables are arranged perpendicular to the Bench.

- a) Plaintiffs are seated at the table closest to the jury box.
- b) Defendants are seated at the table farthest from the jury box.
- c) Counsel and represented parties are seated at the front tables, closest to the Bench.
- d) Support staff should be seated at the tables directly behind counsel.

No soda, coffee or food is allowed in the courtroom. Water bottles are permitted, and water and cups are provided.

The administration of an oath or affirmation is a solemn public ritual and an integral part of any judicial proceeding. The complete attention of all in the courtroom to such oath taking is mandatory.

The Courtroom Deputy will present exhibits and depositions to the witnesses. Thus, you may simply say, "Please look at Exhibit No. 1," or "Please refer to your deposition taken on . . ." and the Courtroom Deputy will provide the exhibit or deposition to the witness.

In jury trials, bench conferences are strongly discouraged and will be minimized. Matters that may otherwise justify a bench conference should ordinarily be raised either before or after the trial day or during a break.

Jury trials normally begin on Mondays at 1:30 p.m. Counsel should be present **one hour before** the scheduled trial time, to go over the attached trial checklist with the Courtroom Deputy. Jury selection will begin as close to 1:30

p.m. as possible. Bench trials begin at 9:00 a.m. and counsel should be present to check in with the Courtroom Deputy at 8:30 a.m.

Subsequent trial days will normally begin at 9:00 a.m. and continue until 5:00 - 5:30 p.m. The lunch recess will usually begin between noon and 12:30 p.m. and will usually be of 75-minute duration. We will usually take a mid-morning and mid-afternoon break for approximately 15 minutes.

At the time counsel arrive for the first day of trial, they must provide the Courtroom Deputy three paper copies and one copy on disk of both the exhibit list and the witness list, as well as the marked copies and original depositions to be used at trial. If any deposition testimony is to be read into evidence during a jury trial, counsel should provide their own reader.

Please advise the Courtroom Deputy of any late or anticipated filings to ensure that all necessary documents are present during trial. I will be available for any preliminary matters.

### **Criminal Matters Only**

**NOTE: The Court does not accept plea agreements pursuant to F.R.Crim.P. 11(c)(1)(c) since the *Booker* and *FanFan* decisions.**

Changes of Plea are set approximately four (4) weeks from the date of the Notice of Disposition, unless specifically requested otherwise in the Notice.

Changes of Plea – ALWAYS bring the signed original and one copy of the “Statement by Defendant in Advance of Change of Plea” and the “Plea Agreement and Statement of Facts” to the courtroom at the time of the hearing. [This is in addition to the courtesy copy required to be delivered to chambers 48 hours before the Change of Plea hearing.] Please read my “Order Setting Change of Plea” carefully.

The AUSA assigned to a criminal matter must be present at a change of plea. If the AUSA cannot attend in person, he/she must be present by phone and a fully briefed substitute AUSA must be physically present.

\* \* \* \* \*

Please direct any questions concerning exhibits or courtroom equipment to Charlotte Hoard or Lucy West at (303) 335-2100. Counsel should schedule times before trial with Ms. Hoard or Ms. West to familiarize themselves with the Courtroom’s technology.

Please also contact Ms. Hoard or Ms. West regarding transcripts. They can give you contact information for the court reporter. If counsel requires special services such as daily copy or real time, they should make such request **at least 30 days in advance of the trial date.**

We are sensitive to the anxieties of trial practice, and we hope to minimize apprehension about local practices. If you have any questions, call my secretary, Jana Dillingham, at (303) 844-3800.

## **CHECKLIST FOR FINAL TRIAL PREPARATION CONFERENCE**

1. Submit a list containing the names and addresses of each witness to be called in your case in chief. Set forth the best estimate of the time required for each witness for direct examination and a brief description of the nature of the testimony of the witness. This witness list is counsels' representation, upon which opposing counsel may rely, that the witnesses listed will be present and available for testimony at trial. Witnesses not listed in the pretrial order may not be listed at the final trial preparation conference absent stipulation or a showing of good cause.
2. Submit a list of proposed exhibits. Exhibits not listed in the pretrial order may not be included on the final exhibit lists except by stipulation or a showing of good cause. Only those exhibits listed on the final exhibit lists presented at the final trial preparation conference may be presented at trial. Counsel shall be prepared to stipulate to the admissibility of exhibits at the final trial preparation conference.
3. Provide citations to any case law that counsel believes the court should review before trial. Limit the citations to those which are believed to be controlling or most persuasive. String cites are not allowed.
4. Submit any stipulated amendments to the pretrial order.
5. Motions in limine are discouraged.

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**CHECKLIST FOR TRIAL**

1. Witness List: On the morning of trial, each side must provide the Courtroom Deputy with three paper copies and one copy on disk of a list of its witnesses (using the form included on-line), whether or not they have been listed in the pre-trial order. One copy will be made available to the Court Reporter, which will avoid the necessity of asking for the spelling of the witness' name. Please be sure that names are spelled correctly, and estimate the time of testimony for direct and cross-examination.
2. Exhibit List: The parties shall prepare a joint list of exhibits that they expect to offer (using the form included on-line). On the morning of trial, three paper copies and one copy on disk of the list must be provided to the Courtroom Deputy. I do not require that exhibits be offered in sequence. I DO require counsel to meet and confer before trial to stipulate to the authenticity and admissibility of exhibits prior to trial, marking the appropriate boxes on the attached form. NOTE: Although they are stipulated, it does not mean they are admitted automatically.
3. Exhibits: All exhibits are to be listed numerically without repetition. Please affix labels to your exhibits before trial. The civil action number shall also be placed on each of the exhibit stickers. Blank exhibit stickers are available at the front counter of the Clerk's Office. Multi-page exhibits must be permanently fastened and each page numbered consecutively to prevent any pages from becoming separated or omitted. All exhibits in proper sequence shall be delivered to the Courtroom Deputy on the morning of trial. We encourage the use of 3-ring binders to hold exhibits. Counsel must provide copies of all exhibits to opposing counsel and have copies for their own reference. An original exhibit notebook and one copy for the Court is required. There will be no juror notebooks of exhibits. Jurors will deliberate with the admitted exhibits in the original exhibit notebook(s). NOTE: Demonstrative exhibits and documents used to refresh memory must also be marked. All

exhibits are to be displayed on the Elmo and must fit on the Elmo. No oversized exhibits are to be used unless requested by motion.

4. Proposed Jury Instructions: Counsel for both sides should meet together well in advance of the trial date and **stipulate to as many proposed jury instructions as possible**. Three sets of instructions should be delivered to my law clerk, Joan Buhler, at the **final trial preparation conference**, one week before trial. See Memorandum to Trial Counsel, located in on-line procedures.

5. Proposed Voir Dire Questions: Counsel should submit proposed *voir dire* questions to the Court no later than the Final Trial Preparation Conference.

6. Terminology: It will be helpful to have a glossary of any unusual or technical terminology provided to the Court and the Court Reporter, **preferably delivered at the Final Trial Preparation Conference**.

7. Written Curricula Vitae: In trial to the Court, a *vita*, marked as an exhibit, will usually suffice for the qualifications of an expert witness.

8. Depositions: At the beginning of trial, you should deliver to the Courtroom Deputy the originals of all depositions you intend to use. In a trial to the Court, you should deliver such depositions to chambers one week prior to trial. If you are going to offer deposition testimony in lieu of a live witness, prepare your page and line designations and cross-designations ahead of time and submit these to the Courtroom Deputy in writing, in duplicate. You are also requested to provide a person to read answers if there is a jury trial. DO NOT mark depositions as exhibits.

9. Trial Briefs: Please advise the Court if you wish to file trial briefs, which may not be filed unless requested by the Court. Briefs requested shall be filed on a date to be set by the Court, and no later than the Final Trial Preparation Conference. Unless otherwise specified, trial briefs shall be limited to ten (10) pages.

10. Jury Costs: In order to avoid assessment of jury costs, you must notify the Court of a settlement before 12:00 noon on the last business day before the scheduled trial date. See D.C.COLO.LCivR 54.2.

11. Standing for Jurors: As a matter of courtesy, it is the Court's policy that everyone stand when the jury enters or leaves. (EXCEPTION: Do not stand for the jury panel members as they come into the courtroom initially for jury selection.)

12. Oath-Taking: Any public oath-taking administered to witnesses, interpreters and Court Security Officers require the undivided attention of counsel as well as all others in the courtroom.

13. Forms of Address: As a sign of respect for the institution, you will refer to the judge as "Your Honor" or "the Court." Please refer to all other persons by their surnames, prefaced by Mr. or Ms. (Miss or Mrs. only when appropriate) unless referencing a quote in which only a first name was used or where a surname cannot be recalled. You may refer to both physicians and Ph.D.'s as "Doctor," and the law enforcement officials as "Agent" or "Officers," as appropriate.

14. Sequestration Orders: Sequestration orders are to be strictly observed. Expert witnesses may not sit in on trials in which sequestration orders have been entered except with express prior authorization. Witnesses should not be "prepped" or their testimony reviewed during breaks after they have been sworn in. Witnesses who have not yet testified at trial should not be provided transcripts of trial proceedings. However, they may be prepared by asking them questions based upon hypotheticals. Once excused, witnesses may sit in the courtroom, unless a party has a good faith belief that the witness will be called again for rebuttal purposes and makes an ongoing exclusion request with the Court.

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## MEMORANDUM

TO: Trial Counsel  
FROM: Judge David M. Ebel  
RE: Proposed Jury Instructions

First, and most importantly, counsel for both sides should meet together well in advance of trial and **stipulate to as many proposed jury instructions as possible.** It is often possible for trial counsel to stipulate to all stock instructions, and frequently counsel are able to agree on most substantive instructions as well.

**At the time of the Final Trial Preparation Conference,** the parties should deliver to my law clerk, Joan Buhler, three separate sets, or packets, of instructions:

- 1) Stipulated – This first set should contain instructions to which both plaintiff and defendant have agreed;
- 2) Competing – This second set should contain instructions on issues where the parties agree an instruction is needed, but disagree on the wording of the instruction; and
- 3) Additional/Non-Stipulated – This third set should contain any additional instruction which a party requests, but to which the other party objects.

The instructions should **NOT** be numbered and there should be no repetition. That is, if the parties stipulate to a particular instruction, then that instruction should be submitted as a stipulated instruction only, and no similar instruction

should appear in either plaintiff's or defendant's set of instructions.

I require two paper copies of each set of proposed instructions. One complete set of all the instructions should be submitted on a computer disk. You must submit these to my law clerk at the Final Trial Preparation Conference (jury instructions are **NOT** filed with the Court Clerk). For the paper copies, one set should have citations listed at the bottom of each instruction and the other should be clean, meaning no citations or titles. My staff will prepare a final clean set to give to the jury following closing arguments. The set on computer disk should be submitted in **WordPerfect 12**, if possible, and should not contain citations.

In addition, the instructions must conform to the following requirements:

- (1) **Instruction titles:** Each instruction should include only the title "INSTRUCTION NO. \_\_\_\_" at the top – centered, in all CAPS and not bolded or underlined. DO NOT fill in the numbers, as my law clerk will number the instructions after I have determined the entire set of instructions to be submitted to the jury. Thus, DO NOT entitle an instruction "PLAINTIFF'S INSTRUCTION NO. 4," for example. There should be a two-line break between the title and the text of the instruction.
- (2) **Font:** Instructions should be submitted in **Arial 12 point font**.
- (3) **Line spacing:** Text of the instructions should be **1.5**.
- (4) **Justification:** Except for the centered title explained above, please use a **left margin** justification, not full justification.
- (5) **Saving to disk:** The set of instructions submitted on a disk should be submitted as one continuous document **with hard page breaks between each separate instruction**.
- (6) **CJI:** In a diversity case in which Colorado law applies, I prefer that you submit instructions that conform to the Colorado Jury Instructions (CJI). CJI may also be used for stock instructions in a federal question case.
- (7) **Stylistic conventions:** When referring to this Court in the body of the instructions, always capitalize the word "Court." In addition, do not use articles when referring to the parties. Do capitalize the parties. The preferred format is: "Plaintiff" or "Plaintiff Smith" rather than "the Plaintiff" or "plaintiff Smith."
- (8) **Please Proofread** your submissions carefully.

FOR YOUR REFERENCE, EXAMPLES OF PROPOSED INSTRUCTIONS WITH AND WITHOUT CITATIONS ARE ATTACHED. If the instructions submitted do not conform to these guidelines, they may be returned to you for reformatting.

**Additional Instructions:** If, during the course of trial, you determine that additional instructions are necessary, please provide one paper copy with citations, one paper copy without citations, and a disk to my law clerk as soon as possible. Of course, you must also give a copy to opposing counsel. Please note that my law clerk, Joan Buhler, will be your primary contact for all matters relating to jury instructions.

**Jury Instruction Conference:** We will have an instruction conference shortly before the case goes to the jury, usually during a lunch break or after the jury is excused for the day. If possible, we will provide you with a draft set of instructions ahead of time. At the instruction conference, I will go through the draft set with you and you will have an opportunity to request changes to the proposed instructions. You also will have an opportunity to state objections on the record at the conclusion of the conference.

Please read the above instructions carefully. If you have any questions, you may call my law clerk.

Thank you for your cooperation in ensuring a smooth trial.

INSTRUCTION NO. \_\_\_\_\_

You are the sole judges of the credibility of the witnesses and the weight to be given their testimony. You should take into consideration their means of knowledge, strength of memory and opportunities for observation; the reasonableness or unreasonableness of their testimony; the consistency or lack of consistency in their testimony; their motives; whether their testimony has been contradicted or supported by other evidence; their bias, prejudice or interest, if any; their manner or demeanor upon the witness stand; and all other facts and circumstances shown by the evidence which affect the credibility of the witnesses.

Based on these considerations, you may believe all, part or none of the testimony of a witness.

Colorado Supreme Court Committee on Civil Jury Instructions, CJI 3:16 (4th Ed.)

Judge David M. Ebel

Case No. \_\_\_\_\_ Exhibits Page \_\_\_\_\_ of \_\_\_\_\_

## WITNESS LIST FORM

**Judge David M. Ebel**

Date: \_\_\_\_\_

Case No. \_\_\_\_\_

Case  
Caption: \_\_\_\_\_ v. \_\_\_\_\_

### Plaintiff/Defendant Witness List

<u>Will Call Witnesses</u> <u>Examination</u> <u>(name &amp; summary of testimony)</u>	<u>Estimated Time for</u>	
	Direct	Cross
1. _____ _____ _____	_____	_____
2. _____ _____ _____	_____	_____

etc.

<u>May Call Witnesses</u> <u>Examination</u> <u>(name &amp; summary of testimony)</u>	<u>Estimated Time for</u>	
	Direct	Cross
1. _____ _____ _____	_____	_____
2. _____ _____ _____	_____	_____

etc.